



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
THELMA WALTERS,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 2000SF0136
)	EEOC NO: 21B993054
PIZZA INN, INC. and N.S. PIZZA, INC.)	ALS NO: S-11254
)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

On May 8, 2001, Respondent Pizza Inn, Inc. filed a Motion to Dismiss and Supporting Memorandum of Law. Over seven months have elapsed for Complainant Thelma Walters to respond. To date, Complainant has neither responded to the Motion to Dismiss nor contacted the Commission with her intent to proceed despite an Order to do so.

Contentions of the Parties

Respondent Pizza, Inn Inc. contends the case and charge against it should be dismissed because: (1) Complainant does not allege Respondent Pizza Inn, Inc. met the definition of "employer" under the Illinois Human Rights Act (Act); (2) Pizza Inn, Inc. is not an "employer" as defined by the Act; (3) Pizza Inn, Inc. cannot be held liable for violation of the Act by its franchisee; and (4) Complainant failed to exhaust her administrative remedies with Pizza Inn, Inc.. Complainant's position is not known because she failed to file a response to Respondent Pizza Inn, Inc.'s Motion to Dismiss.

Findings of Fact

The following findings of fact were derived from the uncontested portions of pleadings and affidavits in the record and were not the basis of any credibility determination by this administrative law judge:

1. On September 17, 1999, Thelma Walters filed a charge of employment discrimination against Pizza Inn, Inc. and N.S. Pizza, Inc..
2. On May 9, 2000, the Illinois Department of Human Rights filed a Complaint of Civil Rights Violation with the Illinois Human Rights Commission that was amended on September 20, 2000. The amended complaint alleged Thelma Walters had been aggrieved by practices of sexual harassment; an act prohibited by section 2-102(D) of the Illinois Human Rights Act.
3. On October 3, 2000, Respondent N.S. Pizza, Inc. timely filed an Answer and on May 8, 2001, Respondent Pizza Inn, Inc. filed a Motion to Dismiss.
4. On May 24, 2001, Complainant's counsel withdrew from the case because Complainant failed to maintain contact with him. Complainant's counsel did not respond to Respondent Pizza Inn, Inc.'s Motion to Dismiss before he withdrew from the case.
5. Since May 24, 2001, an employee of the Commission has made several unsuccessful attempts to contact Complainant by telephone to arrange a telephone status call with all parties to this matter.
6. Complainant was then notified in an Order dated October 5, 2001, and received through certified mail on October 15, 2001, that it was her responsibility to contact the Commission's Springfield office either in writing or by telephone on or before November 5, 2001 and inform me of her intent to proceed.
7. The October 5, 2001 Order explicitly stated that if Complainant failed to contact the Commission by November 5, 2001, then the administrative law judge would assume Complainant had no interest in pursuing her claim against the respondents. The Order further indicated that failure to contact the Commission would result in the granting of Respondent Pizza Inn, Inc.'s Motion to Dismiss without objection and dismissal of this case with prejudice against both Respondents.
8. Complainant neither complied with the Order to contact the Commission with her intent to proceed with her case, nor filed a response to the pending dispositive motion.

9. On December 13, 2001, Respondent N.S. Pizza, Inc. sent a letter to me requesting an Order to be entered regarding Complainant's lack of compliance with the November 5, 2001 Order.

10. Complainant has neither Contacted the Commission nor responded the Motion to Dismiss in over seven months.

Determination

Respondent Pizza Inn, Inc.'s Motion to Dismiss should be granted and the underlying complaint dismissed with prejudice as to both Respondents due to Complainant's failure to file a response to the pending dispositive motion or otherwise indicate an intent to proceed with the case.

Discussion

In this case, Respondent Pizza Inn, Inc. filed a well grounded Motion to Dismiss with attached affidavits alleging it was entitled to a decision in its favor, to which Complainant did not respond. In *Jones and Burlington Northern Railroad*, 25 Ill. HRC Rep. 101(1986), the Commission stated, "We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." *Jones* at 102. For over seven months, Complainant has provided nothing to contradict the motion or otherwise provided any reason why the motion should not be granted. Therefore, an absence of a response shall be deemed an absence of objection and the Motion to Dismiss must be granted.

Furthermore, Section 5300.750(e) of the Commission's procedural rules provides if a party engages in conduct that unreasonably delays or protracts proceedings, the administrative law judge may recommend the Commission dismiss the complaint with prejudice. Complainant's inaction in this case has caused an unreasonable delay of over seven months with Respondent N.S. Pizza, Inc.'s defense of the allegations made by Complainant. Complainant has disregarded an Order instructing her to contact the Commission. She was warned failure to comply with the order would invoke appropriate sanctions.

After numerous telephone attempts by the Commission to contact Complainant she did nothing to further prosecute her case. She failed to comply with my Order even with the knowledge that I would recommend the Commission to find in both Respondents favor. It can only be surmised from Complainant's history with her attorney and with her inaction at the Commission that she has abandoned her claim against Respondents Pizza Inn, Inc. and N.S. Pizza, Inc..

Conclusions of Law

1. A party has five days or an extension thereof to respond to a motion, but not to exceed forty-five days. 56 Ill. Admin Code, Ch. XI, §5300.730(b). Complainant's absence of a response in over seven months shall be deemed an absence of an objection to Respondent Pizza Inn, Inc.'s motion.
2. Complainant has unreasonably delayed the proceedings in this case by both failing to respond to a pending dispositive motion and failing to contact the Commission with her intent to proceed.

Recommendation

Based on the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission grant Respondent's Motion to Dismiss. I further recommend that the complaint of *Thelma Walters v. Pizza Inn, Inc. and N.S. Pizza, Inc.*, together with the underlying charge number 2000SF0136, be dismissed with prejudice.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THIS 8th DAY OF JANUARY, 2002.